

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Request for Extension of Time to)	
Construct Digital Facilities)	File No. BEPCDT-20020301AJC
WICS-DT, Springfield, Illinois)	ID No. 25686
)	
)	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: September 10, 2002

Released: September 16, 2002

By the Chief, Media Bureau:

1. The Media Bureau (the "Bureau") has before it a petition for reconsideration filed by WICS Licensee, LLC (WICS) seeking reconsideration of the Bureau's letter of June 5, 2002, denying its request for an extension of time to construct the digital facilities for WICS-DT and admonishing WICS for failing to meet the May 1, 2002, construction deadline for DTV facilities. For the reasons stated below, we deny the petition.

2. In its petition, WICS argues that the Bureau (1) misstated relevant facts and ignored the realities of DTV construction; (2) ignored WICS's good faith efforts to meet the May 1, 2002, construction deadline; (3) failed to provide due process by not providing adequate notice of its intent to impose admonishments; and (4) failed to afford similarly situated parties similar treatment.

3. WICS relies on essentially the same facts and arguments in support of its first two claimed grounds for reconsideration. WICS claims that the Bureau misstated relevant facts when it concluded that WICS had four years to make adequate arrangements to build its DTV facility. WICS also claims that the Bureau erred in concluding that WICS's representations that its facility would be operational "sometime in 2003" had no reasonable basis. WICS states that it was unreasonable for the Bureau to have expected completion of the station by the May 2002 deadline because the construction permit was not issued until January 2001 and the national DTV build out generated market constraints on the availability of engineers due to unusual demand. WICS also provides a timeline setting out past and future construction steps in support of its position that it made extensive good faith efforts to meet the May 1, 2002, deadline. WICS contends that its actions supported a reasonable expectation that its DTV facility would be operational "sometime in 2003."

4. We find these arguments unpersuasive. To begin with, any delay in the approval of WICS's DTV application arose from the proposals laid out in the application itself. DTV applications that were incomplete, that presented technical, legal, or financial questions, or that were mutually exclusive with other applications naturally took longer to resolve than applications that were grantable as filed.

Furthermore, WICS reasonably should have anticipated that there would be heavy demand on engineers due to the nationwide DTV conversion and should have allowed for possible delays based on that workload. Therefore, WICS's delays either arose from its own actions or from a situation which it easily could have foreseen. In addition, WICS's statements regarding its ability to commence DTV operation "sometime in 2003" were based, in part, on the anticipated completion of a tower study that it still had not received as of the time the petition was filed. In its timeline, WICS states that it anticipates the tower study will be complete in August 2002 and a modification application will be filed, if necessary. Also, in August 2002, WICS-DT hoped to order its transmitter and antenna once the tower study was completed. Commission records indicate that no such application has yet been filed. WICS's timeline indicates that it now hopes to commence low power DTV operations by December 1, 2002, pending the results of its pending tower study. None of the representations gives any credence to WICS's claims that it has a reasonable expectation of commencing operations by either December 1, 2002, as it now claims, or "sometime in 2003," as it originally claimed. The Bureau's conclusion that WICS had failed to justify its failure to meet the May 1, 2002, date and that WICS's projection that its station would be operational by December 2002 had no reasonable basis were, therefore, well founded.

5. WICS next argues that the Bureau failed to give sufficient notice that it would admonish parties who failed to meet the DTV construction deadline. Admonishment is not an unusual or excessively punitive remedy, but rather is a penalty regularly imposed in a variety of contexts for failure to abide by Commission requirements.¹ In this context, WICS failed to comply with a Commission imposed build-out requirement. Its apparent expectation that it would be permitted to do so without ramifications was baseless and mistaken. As a result, WICS's contention that it was denied "due process" when it received an admonishment for failure to comply with the build-out requirement is without merit. WICS should note, however, that if it continues to miss deadlines imposed by the Commission on its DTV build out, it will be subject to additional sanctions.

6. Finally, WICS argues that similarly situated parties were not given similar treatment. Apparently, WICS contends that it was treated unfairly because its DTV application was approved later than the applications of other parties. As noted above, any delay in processing WICS's application resulted from the terms of WICS's proposal, not from any disparate treatment of WICS. We, therefore, reject WICS's contention that it was treated differently than similarly situated parties.

7. ACCORDINGLY, IT IS ORDERED, THAT the petition for reconsideration filed by WICS Licensee, LLC seeking reconsideration of the Bureau's letter of June 5, 2002, which denied WICS's request for an extension of time to construct the digital facilities for WICS-DT and admonished WICS for failure to meet the May 1, 2002, construction deadline for digital television facilities, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

W. Kenneth Ferree
Chief, Media Bureau

¹ See, e.g., *Davidson County Broadcasting*, 12 FCC Rcd 3375 (1997)(failure to comply with EEO rules); *Rainbow Broadcasting*, 14 FCC Rcd 11099 (1999)(failure to obtain Commission consent prior to replacing authorized antenna); *Black Media Broadcasting*, 16 FCC Rcd 3374 (2001)(broadcast of commercials on noncommercial station).